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25 JOINT CASE MANAGEMENT STATEMENT
26 (C07-3950 JF) - 1 -

HONORABLE JEREMY FOGEL

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS; SEA MAR)	Civ. No. C07-3950 JF
COMMUNITY HEALTH CENTER;)	
PINEROS Y CAMPESINOS UNIDOS DEL)	
NOROESTE; BEYOND PESTICIDES;)	JOINT CASE MANAGEMENT
FRENTE INDIGENA de)	STATEMENT
ORGANIZACIONES BINACIONALES;)	
FARM LABOR ORGANIZING)	
COMMITTEE, AFL-CIO; TEAMSTERS)	
LOCAL 890; PESTICIDE ACTION)	
NETWORK NORTH AMERICA; MARTHA)	
RODRIGUEZ; and SILVINA CANEZ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ADMINISTRATOR, U.S.)	
ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Defendant.)	

Plaintiffs United Farm Workers, et al., and defendant Administrator, United States Environmental Protection Agency (“EPA”), jointly submit this Case Management Statement, in accordance with the Court’s Standing Order.

1. Jurisdiction - The Court has jurisdiction pursuant to 28 U.S.C. §1331. There are no disputed issues concerning jurisdiction or venue.

2. Facts - Plaintiffs seek review of two actions by EPA, the 2001 Interim Reregistration Eligibility Decision (“IRED”) for chlorpyrifos and the 2006 Reregistration Eligibility Decision for chlorpyrifos, which incorporates the 2001 IRED and the 2006 Organophosphate Cumulative Risk Assessment. The parties agree that the Court’s review of these actions should be based on the administrative records and only that extra-record evidence

1 permitted under exceptions established by the Ninth Circuit and that there are no disputed issues
2 of fact.

3 **3. Legal Issues** - The legal issue in the case is whether the challenged EPA actions
4 are arbitrary, capricious, or not in accordance with law.

5 **4. Motions** - There are no currently pending motions. As described below, the
6 parties anticipate that plaintiffs will be filing a motion to compel the production of documents
7 that EPA does not believe are part of the administrative records. The parties are aware that
8 motions to intervene are likely to be filed by companies holding registrations for the pesticide
9 that is the subject of the challenged EPA actions. The only other anticipated motions are
10 motions for summary judgment, which the parties believe will be dispositive.

11 **5. Amendment of Pleadings** - The complaint in this case has been amended once to
12 add an additional plaintiff. No further amendments are contemplated.

13 **6. Evidence Preservation** - The parties agree that the Court's review of the
14 challenged EPA actions should be based on the administrative records and only such extra-
15 record evidence that is permissible under Ninth Circuit precedent. EPA is currently in the
16 process of assembling that record. EPA has put in place measures to ensure that emails, records
17 of meetings, drafts, internal documents, and other relevant records plaintiffs believe should be
18 included in the records are preserved.

19 **7. Disclosures** - Because this is a case for review of agency action on administrative
20 records, the initial disclosure requirements of Fed. R. Civ. P. 26 are inapplicable.

21 **8. Discovery** - Because this is a case for review of agency action on administrative
22 records the parties agree that no discovery is required. Because the administrative records for the
23 Agency decisions under review are extensive, defendant seeks additional time beyond that set

out in local rule 16-5 to compile the record indices and to file agreed-upon extracts of the record to the Court. The parties propose the following schedule:

February 15, 2008 EPA will provide plaintiffs with the indices to the administrative records and copies of documents falling into mutually identified categories

April 15, 2008 EPA will file with the Court and serve on plaintiffs a certified index to the administrative records and an agreed-upon extract of the records

The parties currently have a dispute concerning the scope of the administrative records, with plaintiffs asserting that the administrative records should include all records before the agency when it made the decisions, including drafts and internal memoranda, while EPA believes that drafts and deliberative documents are not properly part of the records for judicial review. Plaintiffs intend to file a motion asking the Court to resolve that issue. The parties propose the following schedule for that motion:

November 16, 2007 Plaintiffs' Motion to Clarify the Scope of the Administrative Records

November 30, 2007 Defendant's Opposition

December 7, 2007 Plaintiffs' Reply

9. Class Action - This case is not a class action.

10. Related Cases - The parties are not aware of any related case or proceeding pending either before this or any other Court or any administrative body.

11. Relief - Plaintiffs ask the Court; (1) to declare that EPA acted arbitrarily, capriciously, and contrary to law in the challenged decisions reregistering chlorpyrifos uses; (2) to order EPA to make new reregistration eligibility decisions for chlorpyrifos on an expeditious basis that take into account all relevant data and conform to pertinent legal standards; and (3) to award the organizational (but not the individual) plaintiffs their attorneys' fees and expenses in

1 this action.

2 **12. Settlement and ADR** - The parties have been engaged in settlement discussions
3 and are hopeful that the case can be resolved through settlement. The parties do not believe that
4 any formal process would be helpful to them at this time and have requested an ADR telephone
5 conference.

6 **13. Consent to Magistrate Judge for All Purposes** - Defendant does not consent to
7 having the case assigned to a magistrate judge for dispositive matters. Plaintiffs provided such
8 consent.

9 **14. Other References** - The parties do not believe that this case is suitable for referral
10 to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

11 **15. Narrowing of Issues** - Because this is a case for judicial review of agency action,
12 the parties believe that it can be completely resolved on motions for summary judgment without
13 the need for a trial.

14 **16. Expedited Schedule** - The parties believe that this case can be resolved on
15 motions for summary judgment after production of the administrative records and that no further
16 expedition is appropriate.

17 **17. Scheduling** - The parties agree that there is no need for either discovery or a trial.
18 The parties propose the following schedule for motions for summary judgment:

19 May 15, 2008 Plaintiffs' Motion for Summary Judgment

20 July 15, 2008 Defendant's Opposition and Cross-Motion

21 August 15, 2008 Plaintiffs' Reply and Opposition

22 Defendant reserves its right to move for leave to file a reply on its cross-motion if
23 necessary to respond to new issues raised in plaintiffs' opposition.

18. Trial - The parties agree that the case can be resolved on motions for summary judgment, and thus there is no need for a trial.

19. Disclosure of Non-Party Interested Entities or Persons - Plaintiffs United Farm Workers; Sea Mar Community Health Center, Pineros Y Campesinos Unidos Del Noroeste; Beyond Pesticides; Frente Indigena de Organizaciones Binacionales; Farm Labor Organizing Committee, AFL-CIO; Teamsters Local 890 and Pesticide Action Network North America have no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States or abroad. Defendant is a governmental entity, and thus Local Rule 3-16 is inapplicable to defendant.

Respectfully submitted this 7th day of November, 2007.

/s/ Joshua Osborne-Klein
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(C07-3950 JF) - 6 -

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Counsel for Defendant

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 705 Second Avenue, Suite 203, Seattle, Washington.

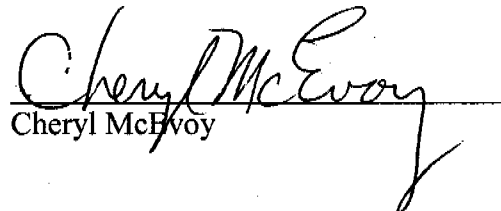
On November 7, 2007, I served a true and correct copy of the following documents on the parties listed below:

1. Joint Case Management Statement.

Norman L. Rave, Jr.
U.S. Department of Justice
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Attorney for Defendant

- ☐ via facsimile
- ☐ via overnight courier
- ☐ via certified mail
- ☐ via first-class U.S. mail
- ☐ via hand delivery
- ☒ via electronic service by Clerk

I, Cheryl McEvoy, declare under penalty of perjury that the foregoing is true and correct.
Executed on this 7th day of November, 2007, at Seattle, Washington.


Cheryl McEvoy